conflict with the Fourteenth Amendment to the Constitution of the United States. *State* v. *Gurry*, 88 Atl. 546.

For a discussion of the principles involved, see NOTES, p. 270.

CONSTRUCTIVE TRUSTS — MISCONDUCT BY NON-FIDUCIARIES — CAN ONE GUILTY OF HOMICIDE ACQUIRE TITLE BY HIS CRIME? — In probate proceedings the plaintiff took out a summons asking that one of the defendants be struck out of the proceedings as having no interest. This defendant had been convicted of the manslaughter of the testator, and under two of the alleged wills being propounded took an interest in the estate. *Held*, that the defendant must be struck out of the proceedings. *Hall* v. *Knight and Baxter*, 135 L. T. J. 550 (Ct. of Appeal).

The majority of cases have held that the slayer as heir or devisee retains both legal and beneficial interest in property inherited from his victim. *Shellenberger* v. *Ransom*, 41 Neb. 631, 59 N. W. 935; *Carpenters Estate*, 170 Pa. St. 203, 32 Atl. 637. A few courts have held that the felon does not take even the legal interest. *Perry* v. *Strawbridge*, 209 Mo. 621, 108 S. W. 641. This has been held to apply as well to the case of manslaughter as to murder. *Lundy* v. *Lundy*, 24 Can. Sup. Ct. 650. But see *Gollnik* v. *Mengel*, 112 Minn. 349, 351, 128 N. W. 292, 293. This view which excludes the claimant guilty of homicide seems directly opposed to the statutes of Wills and of Distributions, for neither statute excludes a slayer from the inheritance. A third view, which does not violate the statute, is that the criminal takes legal title by the statute, but equity will decree him constructive trustee to hold the property for the innocent heirs. See *Ellerson* v. *Westcott*, 148 N. Y. 149, 154, 42 N. E. 540, 542; AMES, LECTURES ON LEGAL HISTORY, 310. The principal case, the first English one directly in point, appears to adopt this view, excluding the manslayer from the proceedings, probably by applying the equity rule under the Judicature Act, 36 & 37 Vict. c. 66, § 24. The constructive trust theory is open to the objection that the other heirs who claim as *cestuis* were deprived by the homicide merely of a naked chance that the deceased, had he lived, might have revoked the will, or in the case of intestacy, that the heir responsible for the death might have predeceased the ancestor. If a constructive trust is looked upon broadly as a remedy, it may be proper to deprive the felon of property unconscionably obtained, permitting the heirs, as next in line, to receive a windfall. It is, however, somewhat anomalous to allow persons without title and not intended by anyone to have an interest, to claim property in court because of another's wrong that worked them no substantial injury. Furthermore, the constructive trust doctrine is not completely effective, because if the criminal sells to a *bonâ fide* purchaser, the heirs are cut off. It is submitted that legislative action disqualifying one guilty of the homicide from taking even the legal title is better than the creation of a constructive trust. Two states have such statutes. Iowa Code (Supplement 1907), § 3386; Cal. Civ. Code (1906) § 1409. The civil law expressly provides that the slayer shall be deprived of the property to which he succeeds. 4 TUILLIER, DROIT CIVIL FRANÇAIS, 113; 3 WINDSCHEID, PANDECKTENRECHTS, §§ 669, 670; La. Civ. Code, 1560, 1710.

CRIMINAL LAW — FORMER JEOPARDY — ACQUITTAL BEFORE COURT WHERE SOME OF JUSTICES WERE INELIGIBLE. — Defendants had been indicted for violating a coal-mining statute, and had been acquitted by a court, of which two of the justices were ineligible. A writ of *certiorari* was asked to quash the acquittal. *Held*, that the defendants having been once in jeopardy, the writ will not lie. *Rex* v. *Simpson*, 136 L. T. J. 10.

The fundamental principle, that a man shall not be put twice in peril for the same offense, being embodied in the national and state constitutions, has

been treated with a degree of rigidity which probably would not have obtained at common law. Therefore, as between this country and England, where the question is largely one of precedent, a difference is shown in the method of approach. Cf. *State* v. *Norvell*, 2 Yerg. (Tenn.) 24, and *Windsor* v. *Queen*, 10 Cox C. C. 276, aff'd. 7 B. & S. 490. But any such difference would not account for the decision in the principal case, which is contrary to the authority of analogous cases in both the United States and England. *Rex* v. *Bitton*, 6 C. & P. 92; *Rex* v. *Bowman*, 6 C. & P. 337; *People* v. *Connor*, 142 N. Y. 130, 36 N. E. 807; *State* v. *Phillips*, 104 N. C. 786, 10 S. E. 463. A judgment rendered by a court of incompetent jurisdiction is illegal and void. *Commonwealth* v. *Peters*, 12 Metc. (Mass.) 387; *Murray* v. *American Surety Co.*, 17 C. C. A. 138, 70 Fed. 341. Therefore an acquittal by such a tribunal should not be a bar to a later action before a court which has jurisdiction. Moreover, the English Criminal Procedure Act of 1857, by stipulating that it is sufficient for the defendant to plead that he had been lawfully convicted or acquitted of the offense charged, seems to have covered the point.

DANGEROUS PREMISES — LIABILITY TO LICENSEES — EFFECT OF STATUTE REQUIRING CAN CONTAINING GASOLENE TO BE MARKED. — The plaintiff, a licensee, having permission to build a fire and warm himself in the defendant's shop, while attempting to do so was injured by pouring gasolene, which he mistook for kerosene, into the stove. The plaintiff had no right to use the contents of the can. The can containing the gasolene was unmarked, which was in violation of a statute requiring gasolene to be kept in a red can plainly lettered. *Held*, that a demurrer to this declaration be sustained. *Molin* v. *Wisconsin Land Co.*, 20 Det. L. N. 895 (Mich., Menominee Co., C. C.).

The unlabeled gasolene was at most a latent defect in the defendant's premises. See *Harper* v. *Standard Oil Co.*, 78 Mo. App. 338, 344. And there being no allegation of any customary use of kerosene for the building of fires or any other purpose, the defendant could not foresee danger to the plaintiff, and so owed him no duty at common-law. *Armstrong* v. *Medbury*, 67 Mich. 250, 34 N. W. 566. But the statute imposed an obligation upon the keeper of gasolene, for the violation of which he is punishable criminally by fine and imprisonment. MICH. PUB. ACTS 1909, Act 37. If a defendant owes a duty of care at common law as regards his conduct toward a plaintiff, the violation of a criminal statute declaratory of that conduct will constitute negligence *per se*. *Bolt* v. *Pratt*, 33 Minn. 323, 23 N. W. 237. But if there is no common-law duty of care, the breach of a penal statute should not make the defendant liable civilly, unless the legislature shows an intention to give a civil remedy by express words or strong implication. *Behler* v. *Daniels*, 19 R. I. 49, 31 Atl. 582. *Mack* v. *Wright*, 180 Pa. 472, 36 Atl. 913. *Contra*, *Parker* v. *Barnard*, 135 Mass. 116; see *Butz* v. *Cavanagh*, 137 Mo. 503, 511, 38 S. W. 1104, 1105. This last is entirely a question of statutory interpretation. *Atkinson* v. *Waterworks Co.*, 2 Ex. Div. 441; *Vallance* v. *Falle*, 13 Q. B. D. 109. And it is submitted that no such intention on the part of the legislature can be drawn from this statute. The courts generally have been far too loose in allowing civil remedies under such statutes. But in the principal case, even if the plaintiff be allowed the benefit of the statute still the court's result is correct. For although the unlawful use of the contents of the can did not forfeit his license (*Spades* v. *Murray*, 2 Ind. App. 401, 28 N. E. 709), the plaintiff should be barred on the ground of contributory illegality. *Banks* v. *Highland, etc. Ry. Co.*, 136 Mass. 485.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — CONTRACT INVOLVING BREACH OF PRIOR CONTRACT. — The defendant was under contract to perform certain services for a third party. The plaintiff induced the